

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAVON MARSHALL, et al.,

Plaintiffs,

v.

ESPN INC., et al.,

Defendants.

Civil Action No. 3:14-cv-1945

Chief District Judge Kevin H. Sharp

**CLASS ACTION
JURY DEMAND**

**PLAINTIFFS' RESPONSE TO THE LICENSING DEFENDANTS'
RULE 12(b)(6) MOTION TO DISMISS**

TABLE OF CONTENTS

| | |
|------------------------------|-------------------------------------|
| DEFINITIONS..... | Error! Bookmark not defined. |
| INTRODUCTION | 1 |
| ARGUMENT | 1 |
| CONCLUSION..... | 2 |
| CERTIFICATE OF SERVICE | 4 |

TABLE OF AUTHORITIES

CASES

| | |
|--|------|
| <u>Banks v. NCAA</u> , 977 F.2d 1081 (7 th Cir. 1992) | 2 |
| <u>McCormack v. NCAA</u> (845 F.2d 1338 (5th Cir. 1988))..... | 2 |
| <u>NCAA v. Board of Regents of University of Oklahoma</u> , 468 U.S. 85 (1984) | 1, 2 |
| <u>United States v. Walters</u> , 711 F. Supp 1435 (N.D. Ill. 1989) | 2 |

COME NOW Plaintiffs, by and through counsel, hereby respond to the Motion to Dismiss filed by Defendants Outfront Media Sports, Inc., IMG Worldwide, LLC, IMG College, LLC, William Morris Endeavor Entertainment, LLC, JMI Sports LLC, Learfield Sports LLC, T3 Media, Inc., and TeleSouth Communications, Inc. (collectively, the “Licensing Defendants”):

INTRODUCTION

Licensing Defendants’ introduction and standard of review sections are not unique and Plaintiffs’ Response to Broadcasters’ and Conferences’ Motions to Dismiss are adopted and incorporated herein by reference.

In their arguments sections, Licensing Defendants adopt the arguments of the other Defendants and then repeat certain arguments as to Plaintiffs’ antitrust claims. To avoid repetition, Plaintiffs’ Responses to Broadcasters’ and Conferences’ Motions to Dismiss are adopted and incorporated herein by reference.

ARGUMENT

Although Licensing Defendants advance a virtually identical argument as to NCAA v. Board of Regents of University of Oklahoma, 468 U.S. 85 (1984), they cite three additional cases in support of their position. As with the arguments made by the other Defendants, none of these cases are not controlling and all are inapplicable to this case.

At the outset, the restraints at issue with respect to both the Broadcast and Licensing Defendants are not the NCAA or Conference rules themselves. With respect to Plaintiffs’ claims, the amateurism rules that preclude Student Athlete compensation are not the restraint at issue. To the contrary, the restraints at issue include, but are not limited to, the multi-million dollar broadcast contracts and multi-media agreements that purport to transfer the right to use the NIL of Student Athletes. Since the restraints complained of here are clearly commercial in

nature, Licensing Defendants' concession that Board of Regents does only applies to non-commercial restraints is significant (See Doc. 219 at PageID 846).

First cited is the 7th Circuit decision in Banks v. NCAA, 977 F.2d 1081 (7th Cir. 1992). Banks is another "no draft, no agent" case and is only cited for the proposition that some colleges have been justifiably sanctioned by the NCAA for their violations of NCAA rules regarding cash compensations. Id. at 1092.

The other two cases were decided in the 1980s and involve bribes. Any payments received were in no way connected to the players rights of publicity or their NIL. Since both are older cases, and the market in which these restraints must be analyzed has dramatically changed. United States v. Walters, 711 F. Supp 1435 (N.D. Ill. 1989) is a criminal case involving mail fraud and RICO violations (Id. at 1437) where the only context where antitrust allegations were analyzed was in the context of defense to a criminal indictment. Id. McCormack v. NCAA (845 F.2d 1338 (5th Cir. 1988)) involves the SMU "death penalty" where the football program was suspended for 1 year due to bribes and unauthorized payments. Id. at 1340. As set out above, neither rights of publicity or NIL were analyzed or even mentioned.

CONCLUSION

For the reasons stated in this Response as well as Plaintiffs' Responses to the Motions to Dismiss filed by the Broadcast and Conference Defendants, Licensing Defendants' Motion to Dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document on this 13th day of February, 2015, via ECF, on the following:

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